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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/773,351

01/31/2001

Daniel H. Maes

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5974

7590

07/19/2006

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EXAMINER

COTTON, ABIGAIL MANDA

ART UNIT

PAPER NUMBER

1617

DATE MAILED: 07/19/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action  
Before the Filing of an Appeal Brief**

Application No.

09/773,351

Applicant(s)

MAES ET AL.

Examiner

Abigail M. Cotton

Art Unit

1617

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 12 July 2006 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.  
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**NOTICE OF APPEAL**

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

**AMENDMENTS**

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);  
(b) ☐ They raise the issue of new matter (see NOTE below);  
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).

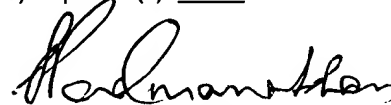
4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
The status of the claim(s) is (or will be) as follows:  
Claim(s) allowed: \_\_\_\_\_.  
Claim(s) objected to: \_\_\_\_\_.  
Claim(s) rejected: \_\_\_\_\_.  
Claim(s) withdrawn from consideration: \_\_\_\_\_.

**AFFIDAVIT OR OTHER EVIDENCE**

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

**REQUEST FOR RECONSIDERATION/OTHER**

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
See continuation sheet.  
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). \_\_\_\_\_.  
13. ☐ Other: \_\_\_\_\_.



**SREENI PADMANABHAN  
SUPERVISORY PATENT EXAMINER**

Continuation Sheet (note 11)

The request for consideration has been considered but does not place the application in condition for allowance, for the reasons of record as stated in the Final Rejection mailed on April 12, 2006.

Applicants argue that the cited references do not teach a composition comprising an "integral mixture" of cholesterol sulfate with the exfoliant, as recited in the claims. Applicants argue that the cited references (Ribier et al. references) teach the formation of a composition having discrete layers or vesicles, and thus do not teach an "integral mixture."

The Examiner respectfully notes that the claims are given their broadest possible reasonable interpretation during examination. Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). The broadest reasonable interpretation of the composition having an "integral mixture" of the cholesterol sulfate with the exfoliant is that the composition comprises a mixture of the cholesterol sulfate that is formed as a unit with another part of the mixture, which is consistent with the dictionary definition of integral as disclosed in the Merriam-Webster Online Dictionary (formed as a unit with another part <a seat with integral headrest.) The prior art teaches and/or suggests such a composition, because the prior art teaches

or suggests combining the cholesterol sulfate with the exfoliant in a single cosmetic composition (an single unit), and thus the components form an integral mixture in the composition because each part forms a unit (the composition) with another part.

Applicants argue that an integral mixture is not a lipid vesicle, and thus that the Ribier et al. references do not teach or suggest the claimed invention. Applicants argue that the vesicles in these references are not integrally mixed, but rather are used to form separate and discrete entities present in the aqueous phase. However, the Examiner respectfully notes that the claims recite an "integral mixture," which given its broadest possible reasonable interpretation means a mixture that has components that form a unit (i.e. a composition) with one another, which is taught by the Ribier et al. references, and includes even compositions having distinct phases and vesicles, as these phases and vesicles nonetheless make up parts of a single unit (the composition.)

The Examiner furthermore notes that, in rebutting a prior new matter rejection of the phrase "integral with" under 35 U.S.C. 112, Applicants argued in the response submitted June 23, 2004 that:

"The Examiner admits that "[t]he recitation 'integral with' could be interpreted as 'mixed with' or 'a mixture of' according [sic] its plain and ordinary meaning. Applicants fully agree with this interpretation ..." (page 2 of Amendment Arguments Submitted June 23, 2004.)

Thus, Applicants appear to have already accepted the plain meaning of "integral with" as being "mixed with" or "a mixture of," according to their own admission. An "integral mixture" as instantly claimed thus clearly encompasses a mixture having the components combined together that makes up a single unit, such as a single composition, as is taught and/or suggested by the references cited above.

It is furthermore noted that the instant Specification does not provide support under 35 U.S.C. 112, first paragraph, for a definition of "integral mixture" that excludes compositions having vesicles or two or more phases. Instead, the specification teaches that the composition provides "integrated results" because the two components (exfoliant and cholesterol sulfate) do not cancel out each other's effects (see page 4, lines 21-29.) Thus, the specification specifically refers to "integrated" in the sense that effects provided by each component are not canceled out by one another. The specification does not disclose that such compositions are required to be absent vesicles or multiple phases, and does not otherwise explicitly define "integral" or "integral mixture" to mean anything other than its ordinary plain meaning.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Abigail M. Cotton whose telephone number is (571) 272-8779. The examiner can normally be reached on 9:30-6:00, M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sreenivasan Padmanabhan can be reached on (571) 272-0629. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

AMC